

§ 385.6 Referral to the Reviewing Official.

When the staff member finds that the public interest so requires, or that, with respect to other than matters requiring immediate action as hereafter specified, there will be insufficient time for discretionary review of his or her decision upon petition, the staff member shall, in lieu of exercising the authority, submit the matter to the Reviewing Official for decision. In any case in which the staff member finds that immediate action is required with respect to any matter assigned herein, the disposition of which is governed by prior precedent and policy, the staff member may take appropriate action and specify that the filing of a petition for review shall not preclude such action from becoming effective.

§ 385.7 Exercise of authority by superiors.

Any assignment of authority to a staff member other than the Chief Administrative Law Judge, the Administrative Law Judge, and the Deputy General Counsel, shall also be deemed to be made, severally, to each such staff member's respective superiors. In accordance with the Department's principle of management responsibility, the superior may choose to exercise the assigned power personally. Moreover, the Secretary may at any time exercise any authority assigned herein.

§ 385.8 Exercise of authority in "acting" capacity.

Unless the assignment provides otherwise, staff members serving in an "acting" capacity may exercise the authority assigned to the staff members for whom they are acting.

Subpart B—Assignment of Functions to Staff Members**§ 385.10 Authority of Chief Administrative Law Judge, Office of Hearings.**

The Chief Administrative Law Judge has authority to:

(a) Consolidate, upon recommendation of the Director, Office of International Aviation (or such staff member of the Office of International Aviation as he or she may designate), into

one proceeding cases involving the investigation of a tariff or of complaints concerned with related tariffs.

(b) With respect to matters to be decided after notice and hearing: (1) Dismiss applications or complaints (except those falling under subpart B of part 302 of this chapter (Procedural Regulations)) when such dismissal is requested or consented to by the applicant or complainant, or where such party has failed to prosecute such application or complaint; (2) dismiss proceedings upon his or her finding that the proceeding has become moot or that no further basis for continuation exists; and (3) dismiss an application subject to dismissal as stale under part 302 of this chapter.

[49 FR 50985, Dec. 31, 1984, as amended at 55 FR 20448, May 17, 1990]

§ 385.11 Authority of the Administrative Law Judges, Office of Hearings.

The Administrative Law Judges, Office of Hearings, have authority to take the following actions in matters to which they are respectively assigned:

(a) Grant or deny intervention in formal proceedings.

(b) With respect to matters to be decided after notice and hearing, dismiss applications or complaints (except those falling under subpart B of part 302 of this chapter (Procedural Regulations)) when such dismissal is requested or consented to by the applicant or complainant, or where such party has failed to prosecute such application or complaint.

(c) Grant requests for consolidation of applications for route authority within the scope of the proceeding before him or her, and deny requests for consolidation of applications for route authority not within the scope of the proceeding.

(d) Approve or disapprove proposed settlements of enforcement proceedings submitted under § 302.215 of this chapter.

§ 385.12 Authority of the Director, Office of Aviation Analysis.

The Director, Office of Aviation Analysis, has authority:

(a) With respect to applications filed under section 41102 to engage in interstate or foreign scheduled or charter air transportation, section 41103 to engage in all-cargo air transportation, or section 41738 to engage in certain commuter air transportation:

(1) To issue an order stating the Department's intention to process the application through show-cause procedures or other expedited procedures, where that course of action is clear under current policy and precedent.

(2) To issue an order to show cause proposing to grant such application in those cases where no objections to the application have been filed, and where the Department has already found the applicant to be fit, willing and able to provide service of the same basic scope and character.

(3) To issue an order, subject to any Presidential review required under section 41307 of the Statute, making final an order to show cause issued under paragraph (a)(2) of this section, where no objections to the order to show cause have been filed.

(4) To issue an order dismissing an application:

- (i) When dismissal is requested or consented to by the applicant;
- (ii) For lack of prosecution; or
- (iii) When the application has become moot.

(5) To review Air Carrier Certificates and Operations Specifications issued by the Federal Aviation Administration to carriers that have been granted certificate or commuter air carrier authority, and information concerning those carriers' fitness to operate under that authority that emerged following the issuance of orders establishing their fitness, and—

(i) To amend orders issuing the certificate or commuter air carrier authority to advance the effective dates of the authority if the review is satisfactory;

(ii) To stay the effectiveness of such orders for up to 30 days if the review is unsatisfactory;

(iii) To lift the stay of effectiveness imposed under paragraph (a)(5)(ii) of this section when the unsatisfactory conditions that required issuance of the stay have been resolved; or

(iv) To issue notices announcing the effective date of the certificate or commuter air carrier authority.

(b) To approve or deny applications of air carriers:

(1) For exemptions from section 41102 or 41103 of the Statute, and from orders issued thereunder, and from applicable regulations under this chapter where the course of action is clear under current policy or precedent.

(2) For waivers of the Department's filing fee requirements under part 389 of this chapter, in accordance with current policy or precedent.

(3) For relief under section 40109 of the Statute to hold out, arrange, and coordinate the operation of air ambulance flights as indirect air carriers in accordance with established precedent.

(c) To waive the deadlines in §377.10(c) of this chapter for filing applications for the renewal of temporary authorizations when, in the Director's judgment, the public interest would be served. The provisions of §377.10(d) of this chapter shall apply in the same manner as to a timely filed application.

(d) With respect to air carrier names:

(1) To register names and trade names of certificated and commuter air carriers pursuant to part 215 of this chapter.

(2) To reissue certificates issued under sections 41102 or 41103 of the Statute when revisions thereof are necessitated by a change in the name of a carrier, provided that no issue of substance concerning the operating authority of the carrier is involved.

(e) To approve, deny, or cancel registrations filed with the Department by air taxi operators and commuter air carriers pursuant to part 298 of this chapter.

(f) With respect to Canadian charter air taxi operations:

(1) To approve applications for registration, or require that a registrant submit additional information, or reject an application for registration for failure to comply with part 294 of this chapter.

(2) To cancel, revoke, or suspend the registration of any Canadian charter air taxi operator using small aircraft registered under part 294 of this chapter that:

(i) Filed with the Department a written notice that it is discontinuing operations;

(ii) No longer is designated by its home government to operate the services contemplated by its registration;

(iii) Holds a foreign air carrier permit under section 41302 to operate large aircraft charters between the United States and Canada;

(iv) Fails to keep its filed certificate of insurance current;

(v) No longer is substantially owned or effectively controlled by persons who are:

(A) Citizens of Canada;

(B) The Government of Canada; or

(C) A combination of both; or

(vi) No longer holds current effective Operations Specifications issued by the FAA.

(3) To grant or deny requests for a waiver of part 294 of this chapter, where grant or denial of the request is in accordance with current policy or precedent.

(g) To approve certificates of insurance filed with the Department on behalf of U.S. and foreign air carriers in accordance with the provisions of part 205 of this chapter.

(h) With respect to foreign air freight forwarders:

(1) To approve applications for registration, or require that a registrant submit additional information, or reject an application for registration for failure to comply with part 297 of this chapter.

(2) To cancel the registration of any foreign air freight forwarder or foreign cooperative shippers association that files a written notice with the Department indicating the discontinuance of common carrier activities.

(3) To exempt the registrant from the requirement contained in §297.20 of this chapter that substantial ownership and effective control reside in citizens of the country that the applicant claims as its country of citizenship, where the course of action is clear under current precedent or policies.

(i) With respect to charter operations:

(1) To grant or deny requests for waiver of parts 207, 208, 212, 372, and 380 of this chapter, where grant or denial

of the request is in accordance with established precedent.

(2) To approve or disapprove direct air carrier escrow agreements filed pursuant to parts 207, 208, and 212 of this chapter.

(3) To reject or accept Public Charter prospectuses filed under part 380 of this chapter.

(4) With respect to the procedures for the registration of foreign charter operators under subpart F of part 380 of this chapter:

(i) To approve applications for registration, or require that a registrant submit additional information, or reject an application for registration for failure to comply with part 380 of this chapter.

(ii) To notify the applicant that its application will require further analysis or procedures, or is being referred to the Assistant Secretary for Aviation and International Affairs for formal action.

(iii) To cancel the registration of a foreign charter operator if it files a written notice with the Department that it is discontinuing its charter operations.

(iv) To waive provisions of subpart F of part 380 of this chapter.

(j) With respect to mail rates:

(1) To issue show-cause orders proposing to make modifications of a technical nature in the mail rate formula applicable to temporary or final service mail rate orders.

(2) To issue final orders establishing temporary and final service mail rates:

(i) In those cases where no objection has been filed following release of the show-cause order, and where the rates established are the same as those proposed in the show-cause order; and

(ii) In those cases where it is necessary to make modifications of a technical nature in the rates proposed in the show-cause order.

(3) To issue final orders amending mail rate orders of air carriers to reflect changes in the names of the carriers subject to the orders.

(4) To issue a letter, in the case of air mail contracts filed with the Department under part 302 of this chapter against which no complaints have been filed, stating that the contract will not

be disapproved by the Department and may become effective immediately.

(k) With respect to essential air service proceedings:

(1) To establish procedural dates.

(2) To issue orders setting interim rates of compensation for carriers required to provide essential air service.

(3) To issue orders approving a carrier's alternate service pattern if:

(i) The resulting level of service at the eligible place would be equal to or greater than the level of service earlier determined to be essential for that place;

(ii) The community concerned does not object to the carrier's implementation of the alternate service pattern; and

(iii) The carrier is not receiving a subsidy for the service or implementation of the alternate service pattern would not increase the carrier's subsidy.

(4) To issue orders adjusting the operational and/or financial unit rates of the payout formula for a carrier receiving subsidy under section 41732 of the Statute where the adjustment will not increase the total amount of compensation that the carrier will receive.

(5) To renew, up to five times in succession, an order under section 41734 of the Statute to an air carrier to continue providing essential air service while the Department attempts to find a replacement carrier.

(6) To request service and subsidy proposals from carriers interested in providing essential air service to an eligible place that is not receiving essential air service and for which no appeal of its essential air service determination is pending.

(7) To request service and subsidy proposals from carriers interested in providing essential air service when no proposals were filed in response to a previous request for proposals.

(8) To issue final orders establishing interim or final subsidy rates under section 41732 or final adjustments of compensation for continued service under section 41732 in those cases where no objection has been filed to a show-cause order, and where the rates established are the same as or less than those proposed in the approved show-cause order.

(9) With respect to provisions for terminations, suspensions, or reductions of service under part 323 of this chapter:

(i) To require any person who files a notice, objection, or answer to supply additional information.

(ii) To require service of a notice, objection, or answer upon any person.

(iii) To accept late-filed objections or answers, upon motion, for good cause shown.

(iv) To extend the time for filing objections for answers, when the initial notice has been filed earlier than required under § 323.5.

[Doc. No. OST-96-1268, 61 FR 19167, May 1, 1996]

§ 385.13 Authority of the Director, Office of International Aviation.

The Director, Office of International Aviation, has authority to:

(a) Approve or deny applications for exemptions, where the course of action is clear under current policy or precedent:

(1) For air carriers, from chapter 411 of the Statute and from certificates and orders issued under that chapter;

(2) For foreign air carriers, from section 41301 and from permits and related orders issued under chapter 413;

(3) For air carriers and foreign air carriers, from chapter 415 and from orders issued and tariffs filed under that chapter; and

(4) From orders and applicable regulations under this chapter.

(b) With respect to applications for certificates of public convenience and necessity under section 41102 and foreign air carrier permits under section 41302:

(1) Issue an order to show cause proposing to grant such application in those cases where no objections to the application have been filed, and the applicant has already been found fit, willing, and able by the Department to provide service of the same basic scope and character;

(2) Issue an order stating the Department's intention to process the application through show-cause procedures;

(3) Issue an order, subject to Presidential review under section 41307, to make final an order to show cause